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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Reinhold Kautzleben

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EXAMINER

PRICE, NATHAN E

ART UNIT

PAPER NUMBER

2194

MAIL DATE

DELIVERY MODE

11/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/749,733	Applicant(s) KAUTZLEBEN ET AL.	
	Examiner Nathan Price	Art Unit 2194	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in response to communications received 21 September 2007. Claims 1 – 20 are pending. Previous objections and rejections not included in this Office Action have been withdrawn.

Response to Arguments

2. Applicant's arguments filed 21 September 2007 have been fully considered but they are not persuasive.

3. Regarding rejections under 35 U.S.C. 101, see the additional explanation provided in the rejection.

4. Applicant argues that a station in Ismael is not a server. However, Ismael states "The stations can take on many forms" (col. 4 line 29) and provides a server as an example (col. 4 lines 29 – 35). Regarding the cluster of application servers, Ismael teaches any number of stations can be present (col. 4 lines 22 – 25).

5. Applicant's arguments indicate that it is not clear what elements of Ismael correspond to elements recited in the claims. To clarify, the stations correspond to application servers (see above response regarding application servers), managed object adaptor servers correspond to server nodes, the frameworks correspond to

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MBean servers (see col. 6 lines 48 – 56 for further explanation) and m-beans correspond to runtime MBeans.

6. Regarding rejections under 35 U.S.C. 103, Applicant argues that the references fail to teach the monitor tree and hierarchical relationship as claimed. However, Wilson teaches the monitor tree and hierarchical relationship by providing the tree (5A) in Figure 1 and the corresponding explanation (§ 59).

Specification

7. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code (§ 31 of the specification). Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claims 14 – 19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 14 – 19 appear to recite elements that can be implemented in software alone and are therefore rejected as software, per se. See MPEP 2106.01. It appears that the claims do not include hardware necessary

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to realize the functionality of the software. The claims are therefore rejected as being directed toward non-statutory subject matter.

9. Moreover, the specification is not clear as to what the claimed article of manufacture comprises. It is not clear if the article of manufacture can be a propagation medium such that the program code is a carrier wave, which is not patent eligible subject matter.

10. Claims 1, 8 and 20 are interpreted as systems or method including the recited network and hardware required to implement the recited network.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 8, 12, 14, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Ismael et al. (US Pat. 6,061,721; hereinafter Ismael):

12. As to claim 1, Ismael teaches a monitoring system comprising:

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a cluster of application servers communicatively coupled on a network to serve applications over the network to a plurality of clients, each of the application servers comprising a plurality of server nodes (Fig. 1; col. 4 lines 20 – 60);

a plurality of MBean servers assigned to the plurality of server nodes (Fig. 3; col. 6 lines 10 – 30);

a plurality of runtime MBeans associated with specified resources on each of the plurality of server nodes and registered with one of the MBean servers, each of the runtime MBeans collecting and reporting monitoring data for its associated resource (col. 6 lines 10 – 30; col. 7 lines 6 – 23); and

cluster integration logic to compile resource data collected from each of the individual runtime MBeans via the MBean servers and to provide the compiled data in a predefined organizational structure to a management interface (col. 9 lines 10 – 43).

13. As to claims 8, 14 and 20, see the rejection of claim 1.

14. As to claims 12 and 18, Ismael teaches generating the monitor MBeans responsive to monitor configuration data stored within a central database (col. 13 line 19 – col. 14 line 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2 – 7, 9 – 11, 13, 15 – 17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ismael as applied to claims 1, 8, 14 and 20 above, and further in view of Wilson (US 2002/0029298 A1).

16. As to claim 2, Ismael fails to teach a tree as claimed. However, Wilson teaches the predefined organizational structure comprises a monitor tree, the monitor tree representing a hierarchical relationship between each of the resources monitored by each of the MBeans (§ 59). It would have been obvious to one of ordinary skill in the art at the time Applicant's invention was made to combine these teachings because both teach managed objects.

17. As to claim 3, Ismael combined with Wilson teach the cluster integration logic comprises a plurality of monitor MBeans arranged in a hierarchical tree structure, each of the monitor MBeans associated with at least one of the runtime MBeans, each of the monitor MBeans to receive the resource data from its associated runtime MBean (Ismael: col. 5 lines 18 – 36; col. 6 lines 10 – 47; Wilson: § 59).

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18. As to claim 4, Ismael combined with Wilson teach a management interface to display the resource data in a graphical structure representing at least a portion of the hierarchical tree structure (Ismael: col. 9 lines 10 – 43; Wilson: ¶ 59).

19. As to claims 5 and 6, see the rejection of claims 12 and 18.

20. As to claim 7, Ismael combined with Wilson teach a connector associated with each MBean server to communicatively couple each MBean server to the cluster integration logic (Wilson: ¶¶ 61, 68).

21. As to claims 9 – 11, 13, 15 – 17 and 19, see the rejection of claims 2 – 4 and 7.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Price whose telephone number is (571) 272-4196. The examiner can normally be reached on 6:00am - 2:30pm, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Thomson can be reached on (571) 272-3718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NP


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